

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>5:07-cr-009-SLB-JEO</b>
	)	
<b>BRIAN SCOTT CULVER.</b>	)	

**MOTION FOR ADDITIONAL PHYSICAL EXAMINATIONS AND  
PHOTOGRAPHS OF FEMALE WITNESSES**

**COMES NOW** Defendant, by and through his undersigned attorney, and respectfully moves this Honorable Court to issue an Order compelling two female witnesses, to-wit: Sharon Culver and K.W. to submit to an additional physical examination for the purposes of making photographic and/or video recordings to be used to conduct comparisons which are critical to the defense in this case, and which are essential toward assuring the observation and guarantee of Defendant's constitutional rights to reasonably confront the evidence against him and receive effective assistance of counsel. In support of said Motion, your Defendant avers as follows:

1. That the State of Alabama has previously conducted a physical examination of each of these two female witnesses, and has produced to Defendant a copy of photographs taken during same. That your Defendant anticipates that the State has also produced a copy of these photographs to the Government, and that the Government will attempt to use these

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photographs previously taken by the State of Alabama for the purpose of identifying the female allegedly depicted in the 8mm videotape at issue in this case.

2. That the defense has conducted an expert review of the 8mm videotape at issue in this case, using a copy that is suitable for obtaining “freeze framed” photographs and conducting forensic comparison and review. After expert review of the 8mm videotape and expert review of the still images described above that the State obtained by conducting “gynecological exams” of Sharon Culver and K.W. some time after the alleged incident, the defense can in good faith make an “offer of proof” to this Honorable Court as to the following:

- (a) The 8mm videotape at issue contains minute physical characteristics that the defense believes can be identified to specific individuals if proper comparative images are provided.
- (b) The still images that the State obtained by conducting “gynecological exams” of Sharon Culver and K.W. some time after the alleged incident are inadequate for forensic comparison purposes for several reasons that can be explained to this Honorable Court.

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- (c) Moreover, the photographs produced to Defendant by the State are inadequate to enable Defendant to conduct comparisons which are critical to the defense in this case in that the photographs obscure certain areas of the female witnesses' bodies that are essential to Defendant's comparisons.
- (d) That the extent of the physical examination, photographing, and/or videotaping of Sharon Culver and K.W. that is needed by the defense to make said forensic comparisons is both *less graphic and less invasive than the examinations previously conducted by the State.*

3. That additional examination, photographing, and/or videotaping of Sharon Culver and K.W. by defense experts is critical to the defense in this case and cannot be obtained by any other means than an additional physical examination of the two female witnesses. That Defendant is prepared to arrange with the Government to conduct the physical examination under such conditions as will ensure that the physical examination will not need to be repeated, including consultation with the individual conducting the physical examination beforehand to ensure all necessary photographs are obtained in one session, and that the photographs

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are taken in such a manner as to ensure they can be enlarged without degradation of quality.

**WHEREFORE, PREMISES CONSIDERED,** Defendant respectfully moves this Honorable Court to issue an Order compelling two female witnesses, to-wit: Sharon Culver and K.W. to submit to an additional physical examination for the purposes of making photographic and/or video recordings, under such conditions as this Honorable Court deems necessary to ensure the examination will not need to be repeated.

Respectfully submitted,

**s/Herbie Brewer**  
**HERBIE BREWER (asb-8713-b55h)**  
**Attorney for Defendant**  
**215 21st Street North, Suite 200**  
**Birmingham, Alabama 35203**  
**(205) 323-6699**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of February, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following attorneys of record: Alice H. Martin, United States Attorney, Laura D. Hodge, Assistant United States Attorney.

**s/Herbie Brewer**

Herbie Brewer